

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
HI-LINE ASPHALT PAVING COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCRB No. 85-8

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a \$1,000 civil penalty for violation of respondent agency's Regulation I, Section 9.09(e)(2) by causing or allowing the emission of excess particulate, as disclosed in Agency Source Test No. 84-6, came on for hearing before the Pollution Control Hearings Board; Gayle Rothrock (presiding) and Wick Dufford on April 24, 1985, at Seattle, Washington. Lawrence J. Faulk has reviewed the entire record in this matter and joins in the opinion. The respondent agency elected a formal hearing, pursuant to RCW 43.21B.230.

1 Appellant company appeared by two of its officers, Jule and Mart.
2 Romano. Respondent appeared by its attorney, Keith D. McGoffin.
3 Court reporter Laura Rawlins recorded the proceedings.

4 Witnesses were sworn and testified. Exhibits were examined.
5 Argument was made. From the testimony, evidence and contentions of
6 the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 Respondent, pursuant to RCW 43.21B.260, has filed with the Board a
10 certified copy of Regulation I and all amendments thereto, which is
11 noticed.

12 II

13 Appellant company operates an asphalt batch plant in south
14 Seattle. The batch plant exhausts through a pollution control
15 baghouse which operation is subject to air pollution regulation by
16 respondent Puget Sound Air Pollution Control Agency (PSAPCA).

17 The fuels burned in processing asphalt have varied. Natural gas,
18 waste oil, and diesel oil have been used. For a period of time last
19 summer and fall, in normal operations, the company was burning a
20 Canadian waste oil which they were able to obtain at an attractive
21 price.

22 III

23 PSAPCA has developed standards for particulate emissions from
24 industrial sources, including asphalt plants, and employs analysts to
25 do source tests periodically to monitor performance of equipment and

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1 aid in the development of new regulatory standards. An official of
2 PSAPCA collected a sample of the waste oil being burned by appellant
3 in August of 1984. On September 7, 1984, another official did a
4 pre-survey of appellant's equipment for a source test PSAPCA hoped to
5 conduct later that month. On September 10, 1984, PSAPCA notified
6 appellant's president by letter of the impending source test.
7 Appellant company asked that the test be in October so the plant
8 maintenance man could correctly set up for the test in accordance with
9 PSAPCA directives.

10 The test directives included a request to "run as normal operation
11 and production rate" and to "burn waste fuels if using this fuel now,
12 otherwise a test on nat (sic) gas means plant can only use NG."

13 At no time prior to the test was anyone at appellant company
14 advised that the results would be used for enforcement purposes.

15 IV

16 There is no commonly used technology for determining continuous
17 compliance with particulate standards. Opacity standards provide a
18 rough indication of particulate problems. But individual source tests
19 (on essentially a grab sample basis) are the most accurate measure of
20 particulate compliance for sources such as appellant.

21 V

22 October 15, 1984, two source tests were conducted at the company
23 batch plant by drawing samples of material from the baghouse. The
24 batch plant was burning waste oil which at that time was the normal
25 operation. Test results were derived from the data. The

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1 concentration and emission rate measured on the two tests were .0703
2 and .0670 gr/dscf and 13.73 and 13.44 lbs/hr. The average of the two
3 was determined to be .0687 gr/dscf and 13.59 lbs/hr. The regulatory
4 standard limit for emissions from asphalt batch plants is .05 gr/dscf.

5 VI

6 On November 19, 1984, a report on the tests was sent to appellant
7 company, along with an analysis of the chemical composition of the
8 waste oil. The latter revealed the fuel to be high in ash and lead.
9 On the same date appellant received a notice of violation. Following
10 this respondent Agency on December 12, 1984, sent Hi-Line Asphalt
11 Paving Company, Inc., Notice and Order of Civil Penalty No. 6184
12 assessing a fine of \$1,000 for the violations of the concentration
13 standard which showed in the Source Test results. From this appellant
14 company appealed to the Board on January 7, 1985.

15 VII

16 Appellant burned the waste oil in its normal operations without
17 knowing its chemical composition. At no time did appellant
18 independently make an effort to acquire this information. Appellant's
19 manager testified, however, that use of the fuel would have been
20 discontinued earlier had they known its contents. Upon receiving the
21 waste oil analysis the company did cease using such oil in the
22 operation of the batch plant.

23 VIII

24 Any Conclusion of Law which is deemed a Finding of Fact is hereby
25 adopted as such.

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1 From these Findings of Fact the Board comes to these

2 CONCLUSIONS OF LAW

3 I

4 The Board has jurisdiction over these persons and these matters.
5 Chapters 43.21B and 70.94 RCW.

6 II

7 Appellant company did burn fuels on October 15, 1984, in normal
8 operation such that concentrations of emissions from the asphalt batch
9 plant exceeded the pertinent regulatory standard set forth at
10 Regulation I, Section 9.09(e)(2):

11 It shall be unlawful for any person to cause or allow
12 the emission of particulate matter if the emission is
13 in violation of section 9.03 or if the particulate
14 matter discharged into the atmosphere from any single
15 source exceeds the following weights at the point of
16 discharge: For all stationary or travel asphalt
17 plants, installed within the boundaries of the agency
18 after March 13, 1968, 0.05 grains for each standard
19 cubic foot of exhaust gas....

20 III

21 This event was recorded during a source test done for purposes of
22 ascertaining concentrations of particulate emitted from appellant's
23 plant from the fuel used in normal operation. Though appellant was
24 not warned that the test would be used for enforcement purposes, the
25 law is a strict liability statute which requires compliance with
26 standards at all times. Under the Washington Clean Air Act, absent
27 the formal granting of a variance, there is no "King's X."

28 In any event, appellant had every opportunity here to prepare for
29 the test and insure the plant was operating at peak efficiency.

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IV

The amount of penalty for excess emissions should be based on factors related to the seriousness of the offense and the behavior of the violator. Here the violation was not extreme. The equipment had not previously failed a source test. Since the events at issue, there have been no problems. In this instance, the plant operators thought they were merely cooperating in adding to the Agency's information on waste oil burning to help in reviewing the sufficiency of current standards. After learning about the result of the test, as well as the composition of the waste oil, they immediately ceased using the waste oil and have since operated with a cleaner (though more expensive) combination of natural gas and diesel.

A portion of the penalty should be suspended.

V

While not determinative of the question of legal liability, the agency should consider advising regulated entities in advance that source test results can be used for enforcement purposes. Such notice is appropriate not just as a matter of public relations but also as a matter of fairness.

VI

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER


Notice and Order of Civil Penalty No. 6184 is affirmed; provided however that \$500 of the amount is suspended on condition appellant not violate respondent's Regulation I, Section 9.09(e)(2) for a period of one year from the date this Order is entered.

DONE this 17th day of May, 1985.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman

 5/17/85
LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member